

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Joint Petition for Resolution of Disputes)	
Relating to Billing Performance)	Docket No. 03-0769
Measurements)	

**SBC ILLINOIS' INITIAL COMMENTS ON DISPUTED ISSUES RESULTING
FROM THE 2003 THIRD PM SIX MONTH REVIEW**

Illinois Bell Telephone Company ("SBC Illinois") and various CLECs¹ (collectively, the "Parties") filed an Amended Joint Petition For Expedited Resolution of Disputes Relating to Performance Measurements on February 11, 2004 ("February 2004 Joint Petition") with this Commission. The Parties requested that (a) the Commission approve additional performance measurements ("PM") to which the Parties agreed in the 2003 third six-month review collaborative ("third PM review") and submitted to the Commission in the tariff filing in Advice No. IL 04-142 (proposed to be effective April 23, 2004), and (b) the Commission resolve certain disputes regarding issues about which the Parties had been unable to reach agreement during the third PM review.²

Pursuant to the agreed-upon procedure in the Commission's Notice of Schedule issued March 26, 2004, SBC Illinois is submitting its initial comments and supporting affidavit for the third PM review disputed issues. The Parties agreed that this procedural schedule requires them

¹ The "CLEC participants" include the following: AT&T Communications of Illinois, Inc., TCG Illinois, TCG Chicago, WorldCom, Inc. d/b/a MCI on behalf of itself and its Illinois operating entities ("MCI"), McLeodUSA Telecommunications Services, Inc., and Forte Communications, Inc.

² In the February 2004 Joint Petition, the Parties also requested that the Commission resolve five disputed issues from the billing PM collaborative. SBC Illinois' position on those issues will be addressed in a separate set of initial comments and affidavit.

to submit now the initial pleadings developed in Wisconsin³ for the third PM review, with appropriate changes to make the documents specific to Illinois.

SBC Illinois addresses herein two general types of disputes from the third PM review. The first type applies to the agreed-to performance measures included in the tariff filing in Advice No. IL 04-142 (proposed to be effective April 23, 2004). The second type applies to performance measures proposed by the CLEC participants in the third PM review. Attached to these initial comments is the Initial Affidavit of James D. Ehr on Behalf of SBC Illinois Regarding the Disputed Issues from the Third PM Review (“Ehr Initial Third PM Review Aff.”), which provides detailed discussion of, and factual support for, SBC Illinois’ position on the disputed issues. Each dispute is listed below as set forth in Attachment B to the February 2004 Joint Petition.⁴

The disputed issues addressed in this brief fall into three general categories: disputes regarding currently implemented performance measures, which are addressed in Section I; disputes about proposed performance measures, which are addressed in Section II; and one dispute regarding an Illinois-specific issue, which is addressed in Section III.

³ *Investigation into Ameritech Wisconsin Operational Support Systems*, Docket No. 6720-TI-160. Initial pleadings were filed by SBC Wisconsin on March 26, 2004. Reply pleadings were filed by SBC Wisconsin on April 6, 2004.

⁴ Any position taken by SBC Illinois in this docket is not a waiver of SBC Illinois’ right to argue and contend in any forum, in the future, that sections 251 and 252 of the Telecommunications Act of 1996 impose no duty or legal obligation to negotiate and/or mediate or arbitrate a self-executing liquidated damages and remedy plan.

I. SBC ILLINOIS' ARGUMENTS ON DISPUTES REGARDING CURRENT PERFORMANCE MEASURES

There are nine disputed issues affecting current performance measurements. These are addressed in subsections A. through I. below.

A. PM MI 11 (Average Interface Outage Notification) Should Be Deleted Because It Is Not Required to Measure Performance on a Competition-Affecting Process, SBC Performance Has Been Outstanding, and The Cost To Generate The Data Is Unjustified.

SBC Illinois proposed the deletion of PM MI 11, Average Interface Outage Notification, for two reasons.⁵ First, PM MI 11 is a diagnostic performance measure with no assigned benchmark, and has been so since the initial implementation of the measure. No CLEC has proposed that this performance measure have either a standard established, or be subject to a remedy, in any of the three six-month review PM collaboratives conducted since PM MI 11's implementation. As such, it appears that this performance measure is not required to measure performance on a competition-affecting process. Second, SBC Midwest's performance results (this performance measure is reported on a regional, five-state basis as the OSS interfaces are not state-specific) have been outstanding: From the time an outage is identified, during the past three years SBC has taken on average only 7.19 minutes to notify CLECs. Given this consistently superior performance, and the fact that production of results for this performance measure is costly and manually intensive, the Commission should eliminate this measure as unnecessary.

⁵ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 10-11.

B. The Commission Should Reject An Increase In the Benchmark for PM 13 (Order Process Percent Flow Through) from 95% to 98% Because Performance Since November 2003 Has Consistently Been Over 97% and There is No Evidence that Flow-Through Results Have A Negative Impact on a CLEC's Ability To Compete.

SBC Illinois proposed moving from parity comparisons to benchmark comparisons for PM 13, Order Process Percent Flow Through, due to the dissimilar processing for retail versus wholesale orders.⁶ The CLECs agreed to move from parity comparisons to benchmarks, and the parties agreed on benchmark performance levels for two of the three disaggregations. The remaining dispute centers on what the appropriate benchmark should be for the third disaggregation: percent flow-through for UNE-P orders designed to flow through. SBC Illinois proposed 95% flow-through benchmark, while MCI proposed a 98% benchmark. The Commission should adopt SBC Illinois' proposed 95% benchmark for three reasons.

First, a comparison of the current UNE-P flow-through results (as depicted in the table in ¶15 of the Ehr Initial Third PM Review Aff.) with the results of those performance metrics that measure whether the order is confirmed in a timely manner, and whether service is actually installed on time and is of a high quality, demonstrates that there is no correlation between the percentage of orders that flow through and the timeliness of delivery of high quality service. Hence, there is no evidence that flow-through results have a negative impact on a CLEC's ability to compete.

Second, in SBC's Four-State Section 271 Authorization proceeding before the FCC (where Illinois was one of the four states), the FCC noted "SBC's wholesale flow-through rates in the four states that are subject of this joint application are within the range that we have

⁶ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 12-18.

accepted in previous applications.”⁷ Accordingly, MCI’s proposal of a 98% benchmark for UNE-P flow-through is simply arbitrary and unsupportable, and varies inexplicably from standards perfectly acceptable to the FCC. SBC Midwest has already committed to a UNE-P order flow-through benchmark of 95% of all orders designed to flow through. There is no ILEC with a higher benchmark for UNE-P flow-through than the 95% standard proposed by SBC Illinois.

Third, imposition of a benchmark higher than 95% would require SBC Midwest to prioritize, ahead of other change requests that could be more valuable to CLECs, Operations Support Systems (“OSS”) enhancements to increase UNE-P flow-through performance, but with no corresponding, demonstrable improvement in UNE-P Firm Order Commitment (“FOC”) timeliness or installation timeliness and quality. The result is that the resources needed to increase flow-through for UNE-P by a very small increment (1%, based on recent performance) would not be available for other enhancements desired by CLECs. The resources dedicated to improving UNE-P flow-through would be significant, because the situations where an order does not flow through occur infrequently, involve complex coding requirements, and typically affect a very limited subset of all CLECs doing business in Illinois.

For these reasons, the Commission should adopt the reasonable, appropriate and supportable benchmark of 95% proposed by SBC Illinois.

⁷ *Application by SBC Communications, Inc. et al. for Authorization to Provide In-Region Inter-LATA Services in Illinois, Indiana, Ohio and Wisconsin*, Memorandum Opinion and Order, WC Docket No. 03-167, ¶ 97 and n. 395 (rel. October 15, 2003).

C. The Commission Should Adopt An Increase In The Benchmark for PM 100 (Average Time of Out of Service for LNP Conversions) from One Hour to Three Hours Because Of the Large Increase in Transactions Due to Wireless Number Portability.

SBC Illinois proposed to increase the current one-hour benchmark for PM 100, Average Time of Out of Service for LNP Conversions, to three hours, based on the anticipated impact of wireless number portability.⁸ When a large number of porting activities occur within a limited window of time, the queues for the Local Service Management System (“LSMS”) and Switching Control Points (“SCP”) may become congested. These industry-standard systems manage and implement porting and pooling routing broadcasts from the Number Portability Administration Center (“NPAC”). In the past four months since wireless portability has been implemented, the number of ports has increased by approximately 300,000 to 400,000. The addition of the wireless ports to the already significant porting and pooling activities adds significant load on LSMS processing. The standard for SCP download rates is approximately 3 TNS per second. If the SCP and LSMS receive activity significant enough to congest the queues, it is possible that there may be ports that do not process within one hour.

D. PM 101 (Percent Out of Service <60 Minutes) Is Duplicative And Should Be Deleted.

SBC Illinois proposed to delete PM 101 in the third PM review because it is duplicative of PM 100.⁹ MCI opposed this proposal. Alternatively, SBC Illinois offered to retain PM 101, and delete PM 100. The CLECs rejected this proposal also. It is simply inappropriate to continue to require SBC Illinois to report the same performance under two separate measures, and even more inappropriate to require SBC Illinois to pay remedies on both measures. This is

⁸ The factual information supporting SBC Illinois’ position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 19-21.

clearly a case where SBC Illinois could be subject to double jeopardy for the same performance failure. The timeliness in which an LNP conversion (the actual activation of the port once notification from NPAC is received) is measured in PM 100 as the average time that the customer is out of service (the time between receipt of the NPAC message and the time the port is activated). This exact same event is measured in PM 101, but as the percent of all LNP conversions completed where the time between receipt of the NPAC message and the time the port is activated is less than 60 minutes. The current standard for PM 100 is an average of 60 minutes. Obviously, any LNP conversion that exceeds sixty minutes will reflect negatively in both PM 100 results and PM 101 results.

As SBC Illinois has emphasized in previous disputes in which CLECs have proposed to require SBC to pay remedies twice, there is a long-standing prohibition in Illinois (as in most jurisdictions) on multiple remedies. See, e.g., Robinson v. Toyota Motor Credit Corp., 201 Ill.2d 403, 422, 775 N.E.2d 951, 963 (2002). SBC Illinois' proposal is consistent with the position that it has taken in the past and with which the CLECs and the Commission¹⁰ have agreed: that is, SBC should not be subject to multiple remedy payments for the same transaction when performance for that transaction fails to meet or exceed the designated standard.

⁹ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 22-24.

¹⁰ For example, in its May 13, 2003 Order in ICC Docket No. 01-0662, the Commission unequivocally rejected proposed modifications to PM MI 12 and PM MI 13.1 that would have resulted in duplicative remedy payments, noting that duplicative remedies were foreclosed both by the agreement of the parties against duplicative remedies as a general matter and by the common law prohibition against duplicative remedies. ICC Order at ¶ 3587.

The most appropriate resolution of the dispute would be to eliminate either PM 101 or PM 100, thereby eliminate both the inefficiency of duplicative measurements and the unlawful imposition of double remedies. Alternatively, the Commission could retain both performance measures but eliminate remedies on PM 101, thereby at least eliminating the problem of double jeopardy.

E. PM 113 (Percentage of Electronic Updates that Flow Through the Update Process Without Manual Intervention) Should Be Deleted As Duplicative and Therefore Unnecessary.

In the third PM review, SBC Midwest proposed deletion of PM 113, Percentage of Electronic Updates that Flow Through the Update Process Without Manual Intervention.¹¹ MCI opposed this deletion. This performance measure is duplicative, since SBC Illinois already has a remedied performance measure (PM 110, Percentage of Updates Completed into the DA Database within 72 Hours for Facility-Based CLECs) that assesses the timeliness of DA Database updates. As a result, the impact on timely completion of DA orders that fail to flow through (and require manual intervention) is already reflected in the results of PM 110, and remedies are paid for performance that does not meet or exceed the established standards. Thus, there is no need for PM 113. Moreover, unless PM 113 is eliminated, SBC Illinois would again be inappropriately subject to duplicative, and therefore unlawful, remedies.

SBC Illinois also has a performance measure that assesses the quality of the manual updates that are made to the DA Database. Specifically, PM 112, Percentage DA Database Accuracy for Manual Updates for Facility-Based CLECs, reports the number of manually-handled updates that are processed without error as a percentage of the total updates that require manual intervention. Flow-through performance on DA Database updates has exceeded 99.6%

of updates received that flowed through in each of the past six months. And timeliness of completion of the updates was similarly excellent, exceeding 99.9% in each month. In fact, in three months 100% of the updates were processed within 72 hours, including those that required manual intervention. The quality of updates processed manually was also very high, exceeding 98.9% in each of the past six months, with performance for three of the six months being 100% (i.e., no inaccurate manual updates made). This high level of performance, in addition to the measurement captured by PM 112, support the Commission's deletion of PM 113 as duplicative and unnecessary.

F. The Commission Should Reject MCI's Proposal to Artificially Split Functions In PM 117 (Percent NXXs Loaded and Tested Prior to the LERG Effective Date) Because It Changes the Intent of the Performance Measure and Does Not Address Any Deficiencies In SBC Illinois' Performance.

MCI proposed that the test and load function measured in PM 117 be artificially split into separate functions, with each being subject to measurement.¹² The problem with MCI's proposal is that the test and load of new codes are infrastructure functions that are planned and managed as one activity. MCI has suggested that "SBC may count any loadings completed by the LERG effective date as meeting the metric event though testing has not occurred." Exhibit JDE-1. However, SBC's standard for NXX implementation does not allow NXXs to be loaded without testing. Separating these processes not only serves no useful purpose, but could also cause potential customer call completion problems.

MCI also proposes expanding the scope of this measure with the addition of Re-Home NXXs. The Business Rules for PM 117 refer to data for "the *initial* NXX(s)..." (Exhibit JDE-1),

¹¹ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 25-31.

showing that the intent of PM 117 is to measure *new* code activation. Re-Homing of NXXs is considered code movement, which is rearrangement, not new, activity. The process for implementation of Re-homing NXXs is different than implementing a new NXX. Additionally, SBC is unaware of any problems experienced by CLECs due to re-homing activities. Based on the extremely low volume of activity for this measure, any additional changes to the performance measure are unnecessary and would impose unjustified implementation costs on SBC Illinois. The Commission should therefore reject the CLECs' proposal.

G. The Commission Should Reject MCI's Proposal to Artificially Split Functions In PM 118 (Average Delay Days for NXX Loading and Testing) Because It Changes the Intent of the Performance Measure and Address Any Deficiencies In SBC Illinois' Performance.

MCI proposed the same sort of revisions to PM 118, Average Delay Days for NXX Loading and Testing, that it proposed for PM 117, discussed in Section I.F above.¹³ It therefore should come as no surprise that SBC Midwest opposes MCI's proposed changes to PM 118 for the same reasons that it opposes the proposed changes for PM 117: the proposed changes would fundamentally and unnecessarily redefine the scope of the performance measure, could cause call completion problems, would impose unjustified costs, and would not address any demonstrable deficiencies in SBC Illinois' current performance. On those bases, the Commission should reject the CLECs' proposal to split functions in PM 118.

H. McLeodUSA's Proposal to Add Remedies to New PM CLEC BLG-4 (Accuracy of Rate Table Updates) is Premature Because New PMs Are Typically Implemented

¹² The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 32-34. MCI's proposal for changes to PM 117 is included as Exhibit JDE-1 to Mr. Ehr's affidavit.

¹³ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 35-37. MCI's proposal for changes to PM 118 is included as Exhibit JDE-2 to Mr. Ehr's affidavit.

On A Diagnostic Basis And Any Standard Would Be Arbitrary Since There Is No Evidence of Performance That Adversely Impacts A CLEC's Ability To Compete.

In the third PM review, SBC Illinois agreed to implement PM CLEC BLG-4 on a diagnostic basis only, to address CLEC billing rate table update accuracy concerns that the impact of rate table update errors would not be visible without a comprehensive billing accuracy performance measure.¹⁴ Implementation of this performance measure on a diagnostic basis will allow CLECs, SBC and the Commission to ensure that this performance measure reasonably and accurately reflects SBC Illinois' performance in processing contract or tariff billing element updates. In past collaboratives, new performance measures have typically been implemented on a diagnostic basis (meaning without a defined performance standard or remedy) in order to establish a baseline to determine the appropriate performance standard that would identify the minimum level of performance required to avoid adverse competitive impact. Such an approach should be used here.

Imposition of an arbitrary performance standard, and an equally arbitrary remedy, that are unsupported by any evidence of performance that adversely impacted a CLEC's ability to compete, is unwarranted. SBC Illinois has agreed to review the diagnostic classification of this performance measure in the next six-month review collaborative expected to commence during July 2004 ("fourth PM review"). The CLECs and the Commission should observe the performance that will be reported for this performance measure first, and then allow the collaborative process to take its course.

I. McLeodUSA's Proposal to Add Remedies to New PM CLEC BLG-5 (Rate Table Correction Timeliness) is Premature Because New Performance Measures Are Typically Implemented On A Diagnostic Basis And Any Standard Would Be

¹⁴ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 38-41.

Arbitrary Since There Is No Evidence of Performance That Adversely Impacts A CLEC's Ability To Compete.

As in the case of PM CLEC BLG-4 described in Section I.H above, SBC Illinois agreed to implement PM CLEC BLG-5 (Rate Table Correction Timeliness) on a diagnostic basis.¹⁵ The same rationale for treatment of PM CLEC BLG-4 as a diagnostic performance measure applies with respect to CLEC BLG-5: that is, there is no evidence identifying competitive harm resulting from a specific level of performance, and implementation of new performance measures that measure previously unmeasured processes are typically implemented on a diagnostic basis.

Accordingly, as with PM CLEC BLG-4, SBC Illinois has agreed to review the diagnostic classification of this performance measure in the fourth PM review. At that time, based on actual performance results, SBC Illinois will work with CLECs to determine (a) if the performance measurement is still required (given the expectation that it will be implementing a comprehensive billing accuracy performance measure); and, if the measure will continue to be reported, (b) what the appropriate performance standard should be and what, if any, remedies should apply.

II. SBC ILLINOIS POSITIONS ON DISPUTES REGARDING PROPOSED PERFORMANCE MEASURES

There are six disputed issues affecting current performance measurements. These are addressed in subsections A. through G. below.

A. The Commission Should Defer Any Decision Regarding The Addition Of, Or An Implementation Schedule For, A New Billing Accuracy Performance Measure Until The Upcoming Fourth Six-Month Review Collaborative.

¹⁵ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 42-44.

MCI and TDS Metrocom are proposing a new, comprehensive billing accuracy performance measure.¹⁶ The Parties had not completed their negotiations at the end of the billing PM collaborative, so SBC is not clear exactly how the CLECs will frame this dispute. SBC expects that the dispute will likely focus on what to include or exclude from the proposed measure and what the timeframe should be for implementation. SBC Midwest has continued to conduct research and has initiated the systems development and process change management work needed to capture the data that would be subject to measurement. In this fashion, implementation of the performance measure could be undertaken in a more expeditious manner once the Parties agree to final details. SBC Illinois expects agreement to be reached in the upcoming fourth PM review expected to commence during July 2004.

The Commission should therefore defer any decision on this dispute regarding a billing accuracy performance measure to the filings that will result from the upcoming fourth PM review, where SBC Illinois will be able to commit to the specifics of the measurement and the specific months in which implementation will commence.

B. The Commission Should Reject TDS Metrocom's Proposed Repeat Billing Exception Performance Measures as Duplicative of Other Performance Measures Already Agreed-to, Or Planned, For Implementation.

In the third PM review, TDS Metrocom proposed implementation of a performance measure for repeat billing disputes.¹⁷ As it turned out, TDS Metrocom distributed two separate proposed performance measures: one numbered and titled "CLEC BLG-4(A), Percent of Repeat Billing Exceptions" and a second numbered and titled "CLEC BLG-4(B), Average Duration of

¹⁶ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 46-49.

¹⁷ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 50-54.

Repeat Billing Exceptions.”¹⁸ Upon review, it became apparent to SBC that the TDS Metrocom proposal was actually another slant on the comprehensive billing accuracy performance measure that had been discussed in the Billing PM collaborative and in the third PM review collaborative (as described in Section II.A above), and did not necessarily have anything to do with actual disputes that would be submitted for resolution.

In fact, SBC Illinois has already agreed to implementation of two performance measures that measure the process where billing exceptions, as defined by TDS Metrocom, would occur. Specifically, SBC Illinois has indicated that it was already prepared to implement PM CLEC BLG-4, Accuracy of Rate Table Updates, and PM CLEC BLG-5, Rate Table Correction Timeliness, and that those performance measures would report on:

- How often there are incorrect rate table updates (the *cause* of the USOC with the incorrect rate that was described as a “billing exception” in the proposed measures, or the cause of the problem to be addressed in TDS Metrocom’s first proposed performance measure in Exhibit JDE-3 of the Ehr Initial Third PM Review Aff.); and
- How long it would take to correct an incorrect rate once discovered (delay which would cause multiple months where the rate being charged for a USOC might be incorrect, or the cause of the problem to be addressed by TDS Metrocom’s second proposed performance measure in Exhibit JDE-3 of the Ehr Initial Third PM Review Aff.)

SBC Illinois opposed implementation of the two repeat billing exception performance measures proposed by TDS Metrocom, as it had already agreed to implement these two rate table performance measures that report on errors, and the delays in fixing them, that generate the symptoms TDS Metrocom sought to report in its proposed measures. In other words, SBC had already agreed to performance measures that would address these issues by measuring the process in which the errors might occur, in contrast to performance measures that would merely measure the symptom. Measuring the actual process will allow SBC Illinois to identify problem

¹⁸ Both of these TDS Metrocom proposals are included in Exhibit JDE-3 to Mr. Ehr’s affidavit.

areas in the most efficient and timely fashion, rather than the less efficient process of identifying symptoms.

Adding the two additional performance measures proposed by TDS Metrocom would require a separate, but equally complex effort, comparable to the effort required to implement the bill accuracy performance measure. Therefore, the two additional performance measures proposed by TDS Metrocom could not reasonably be implemented any earlier than the comprehensive billing accuracy performance measure. The impact of the billing exceptions TDS Metrocom proposes to measure should be reflected in the results reported from the billing accuracy performance measure. As such, implementation of these two performance measures, along with the comprehensive billing accuracy performance measure, would necessarily result in duplicative reporting.

In summary, SBC has already agreed to implementation of two performance measures that measure the process where billing exceptions, as defined by TDS Metrocom, would occur. Accordingly, there is no reason to add the two duplicative measures proposed by TDS Metrocom. In addition, implementation of the comprehensive billing accuracy performance measure will eliminate the need for these performance measures, because the impact would be reflected in the billing accuracy performance measure. The Commission should reject TDS Metrocom's proposed repeat billing exception performance measures as duplicative of other performance measures already agreed-to, or planned, for implementation.

C. TDS Metrocom's Proposal of a PM to Assess Back Billing Is Duplicative of the Billing Accuracy Performance Measure Being Developed As Part Of A Comprehensive Billing Accuracy Performance Measure.

SBC opposes TDS Metrocom's proposed performance measure to assess back billing because there are continuing discussions on implementation of a comprehensive billing accuracy performance measure.¹⁹ The performance measure proposed by TDS Metrocom essentially duplicates the billing accuracy measure SBC Illinois is working to implement. It differs only in that it would report on back billing only, and it would possibly have a more limited scope than the comprehensive billing accuracy performance measure.

Second, such a focused performance measure is not necessary, since the ability to bill a CLEC on a retroactive basis is governed by contractual agreements. Specifically, Interconnection Agreements ("ICAs") allow SBC Illinois, as the billing party, to debit or credit (collectively, "back bill") unbilled, under billed, or over billed amounts for time periods ranging from approximately four (4) months to twenty-four (24) months depending on the negotiated ICA language.

SBC Illinois strives to render accurate bills in a consistent manner, minimizing back billing, though it does have a contractual right to back bill omitted or corrected charges pursuant to the ICA. It is advantageous for SBC Illinois to render bills correctly to eliminate the time and labor associated with processing claims and backbilling. SBC Illinois has, in the past, faced challenges with establishing new billing and ordering processes associated with the offering of Local products. But it is important to note that the Company has made great progress in this area and has put processes in place to accommodate the various billing and ordering arrangements required by multiple ICAs.

An additional, and fatal, shortcoming of TDS Metrocom's proposed performance measure is that it does not allow for any exceptions. Backbilling is not always a case of incorrect

¹⁹ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 54-61. TDS Metrocom's proposal is included as Exhibit JDE-4 to Mr. Ehr's affidavit.

billing, but often occurs as a result of a regulatory ruling or the retroactive application of rates pursuant to ICA language relative to renegotiated successor agreements. Such billing adjustments should not reflect negatively on SBC Illinois' billing performance since, in fact, such adjustments may be mandatory and actually result in more accurate bills.

D. McLeodUSA's Proposal for An Additional Performance Measure To Access Billing Disputes Finalized in 90 Days Is Duplicative and Should Be Rejected.

In the third PM review, McLeodUSA proposed a performance measure that would report on the percent of all billing disputes that are finalized within 90 days of submission.²⁰

"Finalization," as defined in McLeodUSA's proposed performance measure, is when "full credit, as outlined by SBC in the Resolution Notification, appears on CLEC invoice from SBC."

Exhibit JDE-5. This proposed performance measure is neither necessary nor appropriate. Two performance measures that assess the new billing claims process were previously defined by the billing PM collaborative, have been agreed to, and will be implemented with March 2004 results reported in April. As requested by the CLECs, these two already-agreed performance measures would measure the timeliness of a billing claim acknowledgement (PM CLEC BLG-2, Percent of Billing Claims Acknowledged Within 5 Business Days) and the timeliness of claim resolution (PM CLEC BLG-3, Percent of Billing Claim Resolution Notifications Sent within 30 Business Days).

PM CLEC BLG-2 and PM CLEC BLG-3 were jointly developed and agreed-to with the CLECs in the billing PM collaborative in 2003 as adequate to measure performance on processing billing claims. No claim was made by McLeodUSA or any other CLEC in the third PM review collaborative that new performance issues had arisen. The process that

²⁰ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 60-64. The McLeodUSA proposal is included as Exhibit JDE-5 to Mr. Ehr's affidavit.

McLeodUSA's proposed measure is supposed to assess has only been in place since February 2004 (i.e., less than two months). This dispute was therefore submitted before the new, enhanced process had even begun and before any party could understand the impact of the process improvements on any performance issues, perceived or real, of the past. Experience with the process, under the already agreed-to measures, is needed to determine if any issue exists such that would render the proposed measure necessary.

Moreover, the agreed-to PM CLEC BLG-3 already includes all work activities required to finalize resolution of the billing claim. Application of any credit or adjustment to the CLEC account is part of the Billing Claim Resolution process. The Billing Claim Representative that investigates the claim is to take all steps necessary to have the appropriate adjustment (if any) applied to the CLEC account. This activity takes place prior to the resolution notification (timeliness of which is assessed in PM CLEC BLG-3) being sent to the CLEC. As a result, all billing claim work activity required to "finalize" the claim resolution is already completed, and will be reported, within the results of PM CLEC BLG-3. The additional time McLeodUSA seeks to measure is simply the time between when the resolution notification is sent and when the bill that will contain the adjustment is generated. This timeframe is controlled by the billing cycle schedule, and does not reflect any claim processing activity. It is therefore inappropriate to measure this time interval, given the billing claims performance measures already agreed-to for implementation.

SBC Illinois has agreed to the implementation of PM CLEC BLG-3 with March 2004 results to be reported April 20, 2004. The addition of this new billing claim performance measure adequately addresses McLeodUSA's desire to "encourage SBC to promptly investigate

and finalize a CLEC billing claim/dispute.” As such, McLeodUSA’s proposal for an additional performance measure is clearly premature *and* duplicative, and the Commission should reject it.

F. The Commission Should Reject The CLECs’ Proposal To Add a Performance Measure to Assess the Percent of Open DRs and CRs Because It Seeks to Impose Operational Standards On The Change Management Process.

In the third PM review collaborative, the CLECs submitted *seven* separate proposals for additional measures of SBC Illinois’ Change Management Process (“CMP”), along with a proposal to change the existing measure PM 124.²¹ These proposals appeared to SBC to be duplicative and unnecessarily numerous. In response to SBC’s concerns, the CLECs *again* submitted seven individual performance measure proposals, six being new, and the seventh representing changes to the existing PM 124.

The CLECs’ proposals were premature in that they specified performance standards that had not been worked through the CMP forum, so that appropriate operational agreements could be reached and any required process changes could be made, in advance of considering performance measures for the process. Accordingly, SBC Illinois could not agree to the implementation of any of the proposed new measures. SBC Illinois did, however, respond to the proposed changes to PM 124 with modifications, to which CLECs agreed, that could be implemented on condition that the other, premature performance measure proposals would be withdrawn until the process issues related to the proposed standards could be fully discussed in the CMP forum. Unfortunately, the CLECs refused this offer, and two disputes resulted (the dispute addressed in this section and in Section II.G below).

²¹ The factual information supporting SBC Illinois’ position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 65-73.

The performance measure proposed is a measurement of resolution timeliness for OSS Defect Reports (“DRs”) and Change Requests (“CRs”).²² This proposal represents an inappropriate and procedurally improper effort to impose operational standards on the CMP without reaching collaborative agreement to those standards in the CMP forum. As such, the CLECs seek to impose a measurement of the OSS CMP outside of the CMP forum. This effort is inconsistent with SBC Illinois’ commitment to the CMP, and fails to recognize the necessity of following the CMP. SBC Illinois supports the standards defined by the Ordering & Billing Forum and regularly upgrades its pre-order and order interfaces to provide enhanced capabilities to CLECs. The CMP provides a jointly developed, refined process to manage change to those interfaces and other OSS in a manner that serves both the CLEC industry and SBC across its thirteen states. As a tool for monitoring SBC’s compliance with its wholesale obligations, performance measures and a remedy plan are intended to report on the provisioning of access to wholesale products and services, including the associated OSS capabilities, in the same or comparable fashion as is provided to SBC Illinois’ retail operation.

SBC Illinois is already subject to remedies when it fails to meet performance standards as a result of OSS defects. For example, should it fail to issue a timely Firm Order Commitment, SBC Illinois is subject to Tier 1 remedies and Tier 2 assessments if that failure falls outside of the benchmark standard. When SBC Illinois fails to meet installation standards, it is subject to remedies and assessments as well. Similarly, when SBC Illinois fails to meet installation standards, it is subject to remedies and assessments. Thus, the impact of any OSS limitations on a CLEC’s ability to compete is appropriately addressed by the measures of performance that truly impact the CLEC. SBC Illinois is committed to all of these tools (the CMP, the performance measures and remedy plan) as mechanisms to enhance its role as a wholesale

²² Exhibit JDE-6 to Mr. Ehr’s affidavit is the CLEC proposal regarding CRs and DRs for Disputed Issue 14.

provider of telecom services to CLECs. As evidence of its commitment, in the last year, through collaboration in the CMP, SBC Midwest has made the following enhancements to the Defect Process:

- Implemented the Change Management Communication Plan (CMCP) in all regions, which included the addition of the Enhanced Defect Report available to CLECs on the CLEC OnLine Website and a process for notifying CLECs of changes to the OSS that occur outside of the trimester releases.
- Added additional resources to perform Defect Tracking and Root Cause Analysis in order to further enhance OSS and release quality.
- Added Regression Test Cases to ensure increased quality in software releases.
- Instituted regular (monthly) reviews with upper management focused on progress in defect reduction.

The above-listed steps have produced positive results. First, there has been a 44% decrease in the number of defects opened from June 2003 to December 2003 – i.e., the quality of the OSS interfaces and releases has increased significantly. Second, in December 2003, of the defects opened, 18% were closed as “opened in error, or Duplicate,” 33% were resolved, and 49% were open, of which 31% had identified fixes and were being worked through the Defect Management Process. (The metrics on defect and change request resolution are available to CLECs on the CLEC OnLine website.) SBC Midwest has listened to concerns CLECs have had in the past regarding the CMP and has responded with many enhancements. Further, the data on performance in resolving defects and implementing change requests is made available to CLECs through status reporting available on the CLEC OnLine website. There is no need for imposition of any performance measure on a process that works well and is producing the results CLECs need.

A performance measure to assess the Percent of Open SBC Midwest CLEC Impacting OSS System/Software Defect Reports (DRs) and Change Requests (CRs) Created Per DRs Resolved Within “X” Days has nothing to do with determining whether SBC is providing CLECs with access to OSS on a nondiscriminatory basis. All that this proposed performance measure would show is that SBC Illinois did not resolve a defect report on a software change dictated by the CMP within some arbitrary time frame. That does not reveal whether SBC is providing CLECs with access and interconnection on a nondiscriminatory basis. Further, the performance measure interferes with SBC’s ability to properly manage the scheduling and implementation of OSS changes. The proper way to measure the effectiveness of SBC’s OSS is to examine its impact on CLECs, not to allow CLECs to manage SBC’s business. Moreover, a failure to meet the proposed arbitrary deadline does not necessarily mean that CLECs are adversely impacted. Reasons for issuance of defect reports can vary substantially. But for the fact of SBC Illinois notifying the CLECs that there is a defect in a programming change, they normally would not even know that a delay has occurred. For all of these reasons, this proposed performance measure should be rejected.

SBC Illinois’ desire to have an efficient OSS for wholesale customers gives it a good incentive to continue to maintain a robust, quality OSS interface with full CLEC participation through the jointly-developed and managed CMP. The existence of performance measures and a remedy plan that address the true competition-affecting impact of any OSS defects provides the Commission, and CLECs, with additional assurance that any competition-affecting defect will be corrected in a timely manner.

G. The Commission Should Reject The CLECs' Proposal To Add a Performance Measure to Assess the Percent of Change Requests Implemented Within 60 Weeks of Prioritization Because It Seeks to Impose Operational Standards On The Change Management Process.

The same background and discussion in Section II.F above supporting SBC Illinois' opposition to the measure for DR and CR resolution timeliness explain SBC Illinois' opposition to this proposal as well.²³ The CLECs' desire to impose this performance measure is a thinly veiled attempt to have all CLEC-initiated and prioritized change requests implemented, regardless of value to the industry or cost to SBC Illinois. The CLECs will likely argue that this is not the case, as they did in the collaborative when SBC Illinois made this same assessment of the proposal. However, the proposed benchmark of 98%, and the intent to have assessments paid to the State beginning six months after implementation, clearly would require SBC Illinois to implement virtually all CLEC-initiated and prioritized CRS or to fail the measure and make Tier 2 payments.

However, the 13-State CMP (which the proposal metric is intended to measure) was developed through a collaborative process resulting from an FCC merger condition and does not obligate SBC to implement CLEC Change Requests according to any type of schedule, nor does it require SBC to implement any specific number or percentage of CLEC-initiated Change Requests. Furthermore, imposition of a performance measure on implementation of CLEC proposed changes would not assess SBC's compliance with its OSS obligations – which is the only legitimate basis for a performance measure.

The Change Management Process guidelines address a CLEC's right to resort to Commission proceedings to seek changes to the OSS, in addition to a CLEC's right to propose

(or oppose) changes via Change Management. These guidelines give CLECs all the protection they need to insure that the SBC Illinois OSS operates in a nondiscriminatory manner, without turning over the management of SBC's systems to its wholesale customers. This Commission should therefore not impose the proposed performance measure upon SBC Illinois, but instead should direct CLECs to continue their participation in the collaborative CMP to address the OSS and interface changes they desire. Business-to-business negotiations are the appropriate mechanism to define and prioritize OSS and interface functionalities and enhancements.

III. SBC ILLINOIS POSITION ON THE ADDITIONAL DISPUTE REGARDING PROPOSED PERFORMANCE MEASURES THAT IS ONLY BEING RAISED IN ILLINOIS

There is one disputed issue affecting a current performance measure that is only being raised in the State of Illinois.

A. Deletion of PM 124 (Timely Resolution of Significant Software Failures Related With Releases) and Replacement with PM 124 (Measurement of Orders Effected By Software Defects Not Resolved Within 48 Hours).

In the third PM review two proposals were submitted by CLECs either to re-write or delete PM 124, Timely Resolution of Significant Software Failures Related with Releases.²⁴ This PM was implemented, as agreed to by SBC Illinois, in the second PM review at the urging of CLECs and the Indiana Utilities Regulatory Commission staff. The CLECs' proposals for PM 124 were included in the set of proposals about which SBC Midwest requested that CLECs collaborate to reduce the number of Change Management PM proposals (as discussed in Section II.F above).

²³ The factual information supporting SBC Illinois' position on this issue is presented in the Ehr Initial Third PM Review Aff. ¶¶ 74-83. Exhibit JDE-7 to Mr. Ehr's affidavit is the CLEC proposal regarding the Percent of Change Requests in Disputed Issue 15.

SBC Midwest responded to the CLECs' Change Management PM proposals by editing Forte's version of PM 124 as a resolution of the issues in Sections II. F and G above, as well as this separate Illinois-specific dispute.²⁵ SBC Midwest's revised PM 124²⁶ clarifies Forte's version of the PM, which proposed to measure the percent of total LSRs submitted by the CLEC that are rejected due to software defects. Implementation of this version of PM 124 will add another measure that assesses the impact on CLECs of defects in the OSS interface process that impact CLECs – an issue which CLECs indicated in the collaborative was a primary concern. Implementation of this measure will provide CLECs, and the Commission, visibility into the actual impact of software defects on CLECs' ability to submit orders to SBC Midwest.

Ultimately, SBC Midwest believes that the Commission has two alternatives on this disputed issue. One is to defer resolution of the issue, along with the other Change Management Disputed Issues (discussed in Sections II.F and G above) to the appropriate collaborative process. Such a decision will reinforce the preferred method for resolving operational disputes: collaboration. Alternately, the Commission could accept the offer made by SBC Midwest in the third PM collaborative and, as resolution of all three Change Management PM disputes (issues 14, 15 and 16) filed by the CLECs, adopt SBC Midwest's proposal to implement Forte's proposed version of PM 124, as redlined by SBC Midwest.

²⁴ ChoiceOne submitted a proposal to "Re-write or Delete" PM 124. MCI proposed to change the existing PM to be unrelated to software releases.

²⁵ Forte's proposed version of PM 124 is Exhibit JDE-7 to Mr. Ehr's affidavit.

²⁶ SBC Midwest's proposed edits to Forte's version of PM 124 are included in Exhibit JDE-8 to Mr. Ehr's affidavit.

CONCLUSION

For the foregoing reasons, the Commission should resolve the disputed issues addressed herein as proposed by SBC Illinois.

Respectfully submitted this 14th day of April, 2004.

Illinois Bell Telephone Company

By: _____

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